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| APPLICATION NO.             | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------------|-------------|----------------------|---------------------|------------------|
| 10/607,246                  | 06/25/2003  | George Baran         | 6298/432            | 4973             |
| 7590                        |             | 08/10/2007           |                     |                  |
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|                             |             |                      | EXAMINER            |                  |
|                             |             |                      | THANH, QUANG D      |                  |
|                             |             |                      | ART UNIT            | PAPER NUMBER     |
|                             |             |                      | 3771                |                  |
|                             |             |                      | MAIL DATE           | DELIVERY MODE    |
|                             |             |                      | 08/10/2007          | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/607,246

Applicant(s)

BARAN, GEORGE

Examiner

Quang D. Thanh

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 69-74, 81-97, 99-103 and 106-119 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 91-97 and 109-119 is/are allowed.
- 6) ☒ Claim(s) 69, 71-74, 83, 84, 99, 101, 102, 106 and 107 is/are rejected.
- 7) ☒ Claim(s) 70, 81, 82, 85-90, 100, 103 and 108 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This office action is responsive to the amendment filed on 5/19/07. As directed by the amendment: claims 69,71, 81,101,103,106,108 have been amended; claims 1-68, 75-80, 98, 104-105 have been cancelled; and new claims 109-119 have been added. Thus, claims 69-74, 81-97, 99-103, 106-119 are presently pending in this application.
2. The indicated allowability of claims 69 and 101 is withdrawn in view of the newly discovered reference(s) of Makhould et al. (5,291,882) . Rejections based on the newly cited reference(s) follow.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 69, 71-74, 99, 101-102, 106-107 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (5,031,613) in view of Makhould et al. (5,291,882). Smith discloses a catheter (fig. 1) for delivering an aerosol of medicine to a patient comprising: a catheter shaft 2 having a proximal end and a distal end (fig. 1), the distal end 8 of the catheter shaft includes an hour-glass shaped neck 6 (fig. 2) configured to deliver the aerosol plume of particles toward airway passage walls in a patient when the catheter is positioned in the patient (col. 3, lines 27-29); a lumen extending through the catheter shaft and adapted at a proximal end for receiving a medicine and

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communicating at the distal end with a distal medicine orifice from which the medicine is discharged in a direction toward the proximal end of the catheter shaft (fig. 1); and means for nebulizing the medicine discharged at the distal orifice into an aerosol plume of particles of the medicine (fig. 1); wherein the catheter shaft is configured for placement in the patient's lungs (col. 3, lines 27-29); wherein at least a portion of the catheter is constructed of a compliant material (col. 2, lines 16-18); wherein the medicine comprises a liquid (col. 3, lines 30-42); except for the distal end of the catheter shaft forms a J-shape. However, Makhould et al. teaches a ventilation tube 14 that includes a distal end 28 having a J-shape (fig. 1), which serves to direct the flow of fluid away from the distal end (fig. 1, col. 5, lines 48-89). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device in the Smith's reference, to include a catheter shaft having a J-shaped distal end, as suggested and taught by Makhould, so that flow through the shaft is directed away from the distal of the shaft (fig. 1, col. 7, lines 43-50) toward the lungs.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 83-84 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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7. Claim 83 recites the limitation "the distal gas orifice". There is insufficient antecedent basis for this limitation in the claim. Also, the limitation "the second distal gas orifice faces the distal gas orifice" appears to be incorrect since the second distal gas orifice is located adjacent to the distal liquid orifice (see fig. 29).

8. Claim 84 recites the limitation "the distal liquid orifice". There is insufficient antecedent basis for this limitation in the claim. Also, the limitation "the second distal gas orifice faces the distal liquid orifice" appears to be incorrect since the second distal gas orifice is located adjacent to the distal liquid orifice (see fig. 29).

#### ***Allowable Subject Matter***

9. Claims 91-97, 109-119 are allowed.

10. Claims 70, 100, 81-82, 85-90, 103 and 108 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claims 83-84 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Quang D. Thanh/

Quang D. Thanh, Primary Examiner  
Art Unit 3771, (571) 272-4982